WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 01−081

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. The words "identified in," in s. NR 439.075 (2) (b) 1., do not quite capture the effect of the cross-referenced sections. Should this be amended to say "subject to"?

b. The definition of "allowable emissions," in s. NR 446.02 (1), includes substance, specifically, information about how the limit is calculated and what it accounts for, which should be placed in a substantive provision of the rule. Essentially, the definition should end at the first comma, although it may properly include a cross-reference to the substantive provisions that detail the calculation of the limit. For a good model, see the definition of "baseline mercury emissions," in s. NR 446.02 (1d).

c. The rule makes extensive use of the terms "combustion unit" and "process unit," neither of which is defined, at least not for the purposes of ch. NR 446. Should they be defined? Note also that s. NR 446.10 uses the term "boiler." If this has a different meaning than "combustion unit," then it should be defined also; otherwise, a single term should be used throughout the rule.

d. The format used by the Legislative Reference Bureau to establish precise deadlines that are at an as yet unknown date after a provision of a bill takes effect is to state that the required action occurs "no later than the first day of the Xth month beginning after the effective date of this section .... [revisor inserts date]." This form gives the drafter less control over the exact number of days between the effective date and the deadline, but removes any ambiguity

that can arise from the less precise form, "X months after the effective date . . . ." It is suggested that this form be used in the rule, for example, in s. NR 446.03 (1) (b) and (e).

e. Section NR 446.03 (2) (b) 1. and 2. should be consolidated and numbered s. NR 446.03 (2) (b) and s. NR 446.03 (2) (b) 3. to 7. should be numbered s. NR 446.03 (2) (c) to (g), creating a closer parallel to the drafting of s. NR 446.03 (1). If this change is made, the rule should be reviewed for correct internal cross-references.

f. In s. NR 446.07, the relation between subs. (1) and (6) is unclear. Perhaps these provisions could be combined. This section could use a better organization in general. For example, it is not necessary to create a separate subsection for each sentence.

g. Section NR 446.11 (1) (a) and (b) appear almost identical. Could they be combined?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. NR 446.02 (6m) and (10s) (intro.) and (c), the word "which" should be replaced by the word "that." In the last of these examples, however, the entire last phrase, "which emits less mercury" is redundant with the language in s. NR 446.02 (10s) (intro.) and should be omitted.

b. Section NR 446.03 (1) (c) specifies the emissions baselines, "unless the department approves an alternative baseline." This is very vague--can the department approve ***any*** other baseline? Or, is this limited to an alternative baseline requested under par. (d)? If it is the former, then the rule should be expanded to give some guidance; if it is the latter, a cross-reference to par. (d) should be added.

c. In s. NR 446.04 (1) (b) 2. b., how and by whom is a fuel determined to be representative? This needs elaboration.

d. In s. NR 446.04 (2) (c) 2., the words "elect to" are superfluous and should be omitted.

e. Section NR 446.05 (2) needs work. First, it should be written in the active voice: "The department may not issue a permit under ch. NR 406 unless . . . ." Second, the words "equal or greater" should be omitted since the sentence specifies the precise ratio that is required. Third, it should be clarified whether this subsection applies only to facilities emitting at least 10 pounds of mercury per year. This point might be clarified by consolidating s. NR 446.05 (1) to (3) into one unit [s. NR 446.05].

f. It appears that the emission reductions required by s. NR 446.06 apply to the collective emissions of a major utility, although the baseline emissions are calculated facility-by-facility. This could be clarified by explicitly stating that the cumulative emissions of all facilities operated by a utility must be reduced by the specified percentages from the sum of the baseline emissions for those facilities determined under s. NR 446.03. Also, what effect does the schedule of reductions have in a situation in which a "new" major utility is created or formed

between the effective date of the rule and 15 years after the effective date? Should the rule refer to predecessor entities?

g. Various provisions that address mercury product collection programs refer to the handling, storage and disposal of the mercury that is collected. See, for example, s. NR 446.07 (1) (f). Should these provisions also refer to the recycling of mercury?

h. It is not completely clear from ss. NR 446.09 and 446.10 how reduction credits from product collection programs are treated. Are these credits treated as permanent or temporary reductions? That is to say, does the collection and recycling of a certain amount of mercury have the regulatory effect of reducing emissions for one year or of making a permanent emissions reduction?

i. Section NR 446.11 (3) (d) and (e), regarding the need to retest if an emissions unit undergoes a change, apply only to the alternative emission monitoring provisions. Should they apply to the rest of that section as well?